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ORDER E-FILED: 8.29.2007

7 Attorneys for Plaintiff
VERIGY US, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 VERIGY US, INC, a Delaware Corporation

Case No. C07-04330 RMW (HRL)

13 Plaintiff,

14 vs.

**STIPULATED PROTECTIVE ORDER
(MODIFIED BY THE COURT)**

15 ROMI OMAR MAYDER, an individual;
WESLEY MAYDER, an individual; SILICON
16 TEST SYSTEMS, INC., a California Corporation;
and SILICON TEST SOLUTIONS, LLC, a
17 California Limited Liability Corporation,
inclusive,

Complaint Filed:

Trial Date:

None Set

18 Defendants.
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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will
12 be applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under F.R.Civ.P. 26(c).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
24 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
25 nonparty would create a substantial risk of serious injury that could not be avoided by less
26 restrictive means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or
2 Discovery Material in this action.

3 2.7. Designating Party: a Party or non-party that designates information or items
4 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
5 Confidential — Attorneys' Eyes Only."

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated
7 as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

8 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
9 retained to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
12 their support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
15 witness or as a consultant in this action and who is not a past or a current employee of a Party or
16 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
17 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
18 trial consultant retained in connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
22 subcontractors.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material
25 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
26 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
27 parties or counsel to or in court or in other settings that might reveal Protected Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs. For a period of six months after the final termination of this action, this
5 court shall retain jurisdiction to enforce the terms of this protective order.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 Party or non-party that designates information or items for protection under this Order must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. A Designating Party must take care to designate for protection only those parts of
11 material, documents, items, or oral or written communications that qualify – so that other portions
12 of the material, documents, items, or communications for which protection is not warranted are
13 not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
14 designations are prohibited. Designations that are shown to be clearly unjustified, or that have
15 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
16 development process, or to impose unnecessary expenses and burdens on other parties), expose the
17 Designating Party to sanctions. If it comes to a Party's or a non-party's attention that information
18 or items that it designated for protection do not qualify for protection at all, or do not qualify for
19 the level of protection initially asserted, that Party or non-party must promptly notify all other
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced. Designation in conformity with this Order requires:

25 (a) for information in documentary form: (apart from transcripts of
26 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" at the top
28 of each page that contains protected material. If only a portion or portions of the material on a
page qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
2 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
3 CONFIDENTIAL – ATTORNEY EYES ONLY").

4 A Party or non-party that makes original documents or materials available
5 for inspection need not designate them for protection until after the inspecting Party has indicated
6 which material it would like copied and produced. During the inspection and before the
7 designation, all of the material made available for inspection shall be deemed "HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which documents,
10 or portions thereof, qualify for protection under this Order, then, before producing the specified
11 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that
13 contains Protected Material. If only a portion or portions of the material on a page qualifies for
14 protection, the Producing Party also must clearly identify the protected portion(s) (e.g. by making
15 appropriate markings in the margins) and must specify, for each portion, the level of protection
16 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
17 EYES ONLY").

18 (b) for testimony given in deposition or in other pretrial or trial
19 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
20 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
21 and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
23 testimony that is entitled to protection, and when it appears that substantial portions of the
24 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
25 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
26 have up to 20 days to identify the specific portions of the testimony as to which protection is
27 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
28 CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are

1 appropriately designated for protection within the 20 days shall be covered by the provisions of
2 this Stipulated Protective Order. Transcript pages containing Protected Material must be separately
3 bound by the court reporter, who must affix to the top of each such page the legend
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as
5 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

6 (c) for information produced in some form other than documentary, and
7 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
8 the container or containers in which the information or item is stored the legend
9 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only
10 portions of the information or item warrant protection, the Producing Party, to the extent
11 practicable, shall identify the protected portions, specifying whether they qualify as "Confidential"
12 or as "Highly Confidential – Attorneys' Eyes Only."

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
14 to designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'
15 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection
16 under this Order for such material. If material is appropriately designated as "Confidential" or
17 "Highly Confidential – Attorneys' Eyes Only" after the material was initially produced, the
18 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
19 that the material is treated in accordance with the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
22 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
23 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
24 waive its right to challenge a confidentiality designation by electing not to mount a challenge
25 promptly after the original designation is disclosed.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
27 Party's confidentiality designation must do so in good faith and must begin the process by
28 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)

1 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
2 for its belief that the confidentiality designation was not proper and must give the Designating
3 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
4 change in designation is offered, to explain the basis for the chosen designation. A challenging
5 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
6 and confer process first.

7 6.3 Judicial Intervention. A Party that elects to press a challenge to a
8 confidentiality designation after considering the justification offered by the Designating Party may
9 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
10 applicable) that identifies the challenged material and sets forth in detail the basis for the
11 challenge. Each such motion must be accompanied by a competent declaration that affirms that the
12 movant has complied with the meet and confer requirements imposed in the preceding paragraph
13 and that sets forth with specificity the justification for the confidentiality designation that was
14 given by the Designating Party in the meet and confer dialogue. The burden of persuasion in any
15 such challenge proceeding shall be on the Designating Party. Until the court rules on the
16 challenge, all parties shall continue to afford the material in question the level of protection to
17 which it is entitled under the Producing Party's designation.

18 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a non-party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this Order. When
23 the litigation has been terminated, a Receiving Party must comply with the provisions of section
24 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained by a
25 Receiving Party at a location and in a secure manner that ensures that access is limited to the
26 persons authorized under this Order.

1 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party's Outside Counsel of record in this action, as
5 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
6 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
7 attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of
9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
13 Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
17 Bound by Protective Order" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure
19 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material must be separately bound by the court reporter and may not be disclosed to
22 anyone except as permitted under this Stipulated Protective Order.

23 (g) the author of the document or the original source of the information.

24 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

1 (a) the Receiving Party's Outside Counsel of record in this action, as
2 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
3 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
4 attached hereto as Exhibit A;

5 (b) Experts (as defined in this Order) (1) to whom disclosure is
6 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by
7 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,
8 below, have been followed;

9 (c) the Court and its personnel;

10 (d) court reporters, their staffs, and professional vendors to whom
11 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
12 Bound by Protective Order" (Exhibit A); and

13 (e) the author of the document or the original source of the information.

14 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
15 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

16 (a) Unless otherwise ordered by the court or agreed in writing by the
17 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any
18 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
19 EYES ONLY" first must make a written request to the Designating Party that (1) identifies the
20 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
21 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her
22 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's
23 current employer(s), (5) identifies each person or entity from whom the Expert has received
24 compensation for work in his or her areas of expertise or to whom the expert has provided
25 professional services at any time during the preceding five years, and (6) identifies (by name and
26 number of the case, filing date, and location of court) any litigation in connection with which the
27 Expert has provided any professional services during the preceding five years.

1 (b) For the first 30 days after filing of the complaint, a Party that makes
2 a request and provides the information specified in the preceding paragraph may disclose the
3 subject Protected Material to the identified Expert unless, within three court days of delivering the
4 request, the Party receives a written objection from the Designating Party. Thirty one (31) days
5 after filing of the complaint a Party that makes a request and provides the information specified in
6 the preceding paragraph may disclose the subject Protected Material to the identified Expert
7 unless, within seven (7) court days of delivering the request, the Party receives a written objection
8 from the Designating Party. Any such objections must set forth in detail the grounds on which it is
9 based.

10 (c) A Party that receives a timely written objection must meet and
11 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
12 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
13 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
14 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
15 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure
16 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
17 suggest any additional means that might be used to reduce that risk. In addition, any such motion
18 must be accompanied by a competent declaration in which the movant describes the parties'
19 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
20 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve
21 the disclosure. In any such proceeding the Party opposing disclosure to the Expert shall bear the
22 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
23 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
25 **OTHER LITIGATION**

26 If a Receiving Party is served with a subpoena or an order issued in other litigation that
27 would compel disclosure of any information or items designated in this action as
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the

1 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
2 and in no event more than three court days after receiving the subpoena or order. Such notification
3 must include a copy of the subpoena or court order. The Receiving Party also must immediately
4 inform in writing the Party who caused the subpoena or order to issue in the other litigation that
5 some or all the material covered by the subpoena or order is the subject of this Protective Order. In
6 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
7 the Party in the other action that caused the subpoena or order to issue. The purpose of imposing
8 these duties is to alert the interested parties to the existence of this Protective Order and to afford
9 the Designating Party in this case an opportunity to try to protect its confidentiality interests in the
10 court from which the subpoena or order issued. The Designating Party shall bear the burdens and
11 the expenses of seeking protection in that court of its confidential material – and nothing in these
12 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
13 disobey a lawful directive from another court.

14 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
16 Material to any person or in any circumstance not authorized under this Stipulated Protective
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
18 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
19 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
21 Be Bound” that is attached hereto as Exhibit A.

22 **10. FILING PROTECTED MATERIAL**

23 Without written permission from the Designating Party or a court order secured after
24 appropriate notice to all interested persons, a Party may not file in the public record in this action
25 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
26 with Civil Local Rule 79-5.

27 **11. FINAL DISPOSITION**

1 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
2 after the final termination of this action, each Receiving Party must return all Protected Material to
3 the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
4 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
5 Protected Material. With permission in writing from the Designating Party, the Receiving Party
6 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
7 Material is returned or destroyed, the Receiving Party must submit a written certification to the
8 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
9 deadline that identifies (by category, where appropriate) all the Protected Material that was
10 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
11 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
12 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
13 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
14 even if such materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
16 (DURATION), above.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item on any ground not addressed in this Stipulated Protective
23 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
24 the material covered by this Protective Order.

25 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

26 Dated: August 24, 2007

BERGESON, LLP

27 By: 
28

John W. Fowler
Attorneys for Plaintiff
VERIGY US, INC.

Dated: August 24, 2007

Mount & Stoelker P.C.

By: 

Daniel S. Mount, Esq

Kevin M. Pasquinelli Esq.
Attorneys for Defendants
ROMI OMAR MAYDER, SILICON TEST
SYSTEMS, INC., and WESLEY MAYDER

VIA FACSIMILE

(AS MODIFIED BY THE COURT),

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 29, 2007 

[name of judge] Howard R. Lloyd

United States District Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for
 August 29, 2007 *Verigy US, Inc. v. Mayder, et al.*,
 the Northern District of California on ~~XXXX~~ in the case of _____ ~~[insert formal name of the~~
~~C07-04330 RMW (HRL)~~
~~case and the number and initials assigned to it by the court].~~ I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is subject to
 this Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number]
 as my California agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____ [printed name]

Signature: _____ [signature]